



April 22, 2002

Ms. Julie Reagan Watson
Assistant General Counsel
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2002-2024

Dear Ms. Watson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161558.

The Texas Department of Human Services (the "department") received a request for "documentation of the last survey regarding Legacy Home Health Care." You advise that you are withholding reports, records, and working papers used or developed in an investigation under chapter 142 under section 142.009(d) of the Health and Safety Code, and redacting the name of an individual from a Health Care Financing Administration ("HCFA") 2567 Form, pursuant to a previous determination issued in Open Records Letter No. 2001-5348 (2001). *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). You state that the remainder of the submitted HCFA 2567 Form, and a portion of the requested information, will be released to the requestor. You claim that some additional requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that certain information in the state form entitled Statement of Licensing Violations and Plan of Correction is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 142.009(d)(5) of the Health and Safety Code. As noted above, section 142.009(d) states that "reports, records, and working papers used or developed in an investigation . . . are confidential and may not be released or made public except . . . (5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency." Health & Safety Code § 142.009(d)(5).

You acknowledge that section 142.009(d)(5) requires the department to release this state form, without releasing the name of an individual contained within the form. Based on your representations and our review of the submitted information, we conclude that the department must withhold the highlighted information under section 142.009(d)(5). The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Saldivar", written in a cursive style.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/sdk

Ref: ID# 161558

Enc: Submitted documents

c: Ms. Caroline Pietzsch
Prairie Creek Village
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Dallas, Texas 75217
(w/o enclosures)